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Dated: November 1, 2002

Signature: 

(William C. Geary III)

Docket No.: 101537-0028
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard R. Anderson

Application No.: 09/929,384

Group Art Unit: 1614

Filed: August 14, 2001

Examiner: V. Kim

For: TOPICAL AMINOLEVULINIC ACID-
PHOTODYNAMIC THERAPY FOR THE
TREATMENT OF ACNE VULGARIS

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RESPONSE

Commissioner for Patents
Washington, DC 20231

Dear Sir:

This is in response to the Office Action mailed October 8, 2002.

The Examiner requests restriction to one of the following inventions:

I. Claims 1-21 and 25-29, drawn to a method of treating a sebaceous gland disorder using photodynamically activated 5-aminolevulinic acid.

II. Claims 22-24 drawn to a method for modifying pilosebaceous units using a photodynamically activated 5-aminolevulinic acid.

The Examiner argues that the claims of Groups I and II, identified above, are patentably distinct because they "have acquired a separate status in the art as shown by their different classification and the search required for each group is not the same."

Applicant provisionally elects the Group I claims (Claims 1-21 and 25-29), but traverses the Examiner's restriction requirement.

The Examiner is incorrect in stating that the claims of Groups I and II are patentably distinct and have acquired a separate status in the art and a different classification. Applicant submits that a search for either the Group I or Group II claims would encompass the other group of claims. Although the wording of the preamble of Claims 1 and 22 differs slightly, this variation in language does not make the claims patentably distinct. Claim 1 is directed to a method of treating a sebaceous gland disorder involving the steps of topically applying ALA to skin that is affected with a sebaceous gland disorder (i.e., an acne-inflicted part of the skin) so that the ALA becomes converted into a photosensitizing agent that is actuable by energy that penetrates the outer layers of the epidermis. As a result, a sufficient amount of the ALA will infiltrate into spaces in the skin, and the skin is then exposed to a certain level of light energy that causes the photosensitizing agent to become photodynamically activated to modulate or cure the sebaceous gland disorder. In doing so, the cells causing the sebaceous gland disorder are destroyed.

Claim 20 is directed to a method of modifying pilosebaceous units, which are elements that contribute to sebaceous gland disorders. Like Claim 1, this method also requires that ALA be applied to a section of skin so that the ALA enters the skin and is converted to a photosensitizing agent localized at a pilosebaceous unit (i.e., after penetrating outer layers of the epidermis) and is photoactuable by energy which penetrates the outer layers of the skin. Thereafter, the skin is exposed to a sufficient amount of light energy to cause the photosensitizing agent to become photodynamically activated and to modify (i.e., destroy) the pilosebaceous unit.

Applicant notes that the references referred to in the Office Action (U.S. Pat. Nos. 4,931,274 and 5,872,113) are entirely unrelated to each other, and they are not relevant to the present invention. The '113 Patent is for a vitamin composition for treating osteoporosis while the '274 Patent is a composition for treating dandruff. These do not relate to different methods for treating sebaceous gland disorders using light energy.

Contrary to what the Examiner argues, the claims of Groups I and II are so closely related that the claims of these groups would be similarly impacted by the same references. Further, Applicant submits that the claims of Groups I and II are not patentably distinct and that the same

search will sufficiently cover all claims in the pending application. Applicant thus requests that the Examiner withdraw the restriction requirement and proceed with examination of all of Claims 1-29.

The Examiner is urged to telephone the undersigned Attorney for Applicant in the event that such communication is deemed to expedite prosecution of this application.

Dated: November 1, 2002

Respectfully submitted,

By 

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